

10 January 1976

MEMORANDUM FOR: Special Counsel to the DCI

It is unfortunate that I was unable to stay with the meeting on Friday for the full time because I do still have some serious problems with the draft bill-resolution.

1. I believe that we ought to go on record with respect to Section 6(c). If service on this Committee is to be in addition to other committee assignments, how can a Senator take on these important additional responsibilities? If the Committee on Intelligence is not a major committee, what is?

2. The disclosure provisions in Section 11(a), (b), and (c) still raise in my mind a serious constitutional problem. However, since this is to be a resolution rather than statute, it is possible we could live with it. I think we should preserve our position, as should the Executive branch, by not agreeing or concurring with the ultimate principle that two-thirds of the Senate can override the President on disclosure. We could merely take the position that, while it does raise constitutional problems, we would not object to it.

3. Certainly Section 13(c) has been improved. However I think it should be looked at again most carefully, because as a practical matter these provisions could seriously limit the flexibility of CIA and the other agencies to carry out their responsibilities under law. In fact, I believe there is raised the serious question of congressional delegation of law-making authority to a committee. This is unlike Section 662 of the Foreign Assistance Act, where the law itself specifies the activities which must be certified by the President and reported to committees. What if urgent action was required to meet the demands of national security, and the activity falls under the heading specified by the committee, and the Congress is not in session?

4. There have been papers and other opinions expressed on the contents of Section 14. Section 8 of the CIA Act of 1949 was enacted to be a permanent authorization of appropriations for CIA. An annual authorization act will carry dollar figures and I know of no means by which an authorization act can be secret. Therefore this provision makes the Agency budget figure public, which the Agency has resisted and which the Congress itself has approved remaining secret. Furthermore, annual authorization acts invite yearly riders of one kind or another. While I know they can be placed on appropriations bills or elsewhere, a specific CIA authorization simply attracts attention and invites more efforts at restricting Agency activities.

5. Section 15 in its full import would simply not be acceptable to the Agency. This is in fact a ~~repeal~~ of our 8(b) authority. On its face it gives the Comptroller General access to all documents we have. This could include vouchers with names of agents and vouchers for reimbursement to cooperating American corporations. As you well know, 8(b) authority in one form or another has been available to the Executive branch for intelligence purposes since the times of George Washington. This is not the time to eliminate it.


6. I have problems with the definition in Section 17(1). I would delete all after the words "which is in support of" and in lieu insert "national intelligence." The deleted words are so broad that it could include foreign policy actions and military actions and surely they are supported by collection, analysis, production, etc. Furthermore, the deleted words really add nothing.

7. There is no provision for secrecy agreements for the staff. Under the present status of the law the only effective tool we have found to prevent disclosure has been a secrecy agreement. To me this is important enough that it ought to be specified in the resolution.

8. I do not know whether it was discussed, but I have serious reservations about the wisdom and the appropriateness of combining, in one committee, foreign intelligence and domestic intelligence. The constitutional responsibilities of the President are quite different for these two areas of intelligence. It is much a case of mixing apples and oranges. The considerations that apply to foreign intelligence activities and domestic intelligence activities are, again, quite different, and there would be a tendency to apply the same standards to both.

STATINTL


JOHN S. WARNER
General Counsel

cc: DD's
OLC
Chief, Review Staff


STATINTL